IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 23RD JANUARY 2007 / 3RD MAGHA 1928

WP(C).No. 1790 of 2007(K)

AGAINST THE ORDER DATED 18.12.23006 IN IA.---/2006 IN OS.---/2006 of PRL.SUB COURT,THRISSUR

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PETITIONER:

HAMEED HAJI, AGED 58 YEARS,
S/O.KALATHIL PARAMBIL KUNHAHAMMU,
NATTIKA VILLAGE AND DESOM,
CHAVAKKAD TALUK.

BY ADV. SRI.K.P.SREEKUMAR
SRI.P.M.SATHEESH

RESPONDENTS:

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1. THE GENERAL MANAGER,
DISTRICT INDUSTRIES CENTRE,
TRICHUR-3.

2. GOVERNMENT OF KERALA, REPRESENTED
BY THE CHIEF SECRETARY TO THE GOVERNMENT,
TRIVANDRUM.

BY GOVERNMENT PLEADER SRI. V.T.K. MOHANAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: TRUE COPY OF AGREEMENT DATED 30.12.97.

EXT.P2: TRUE COPY OF DEMAND NOTICE DATED 6.10.06.

EXT.P3: TRUE COPY OF REPRESENTATION FILED BY PETITIONER ON 27.11.06 BEFORE DISTRICT COLLECTOR.

EXT.P4: TRUE COPY OF RECEIPT DATED 27.11.06 EVIDENCING ACKNOWLEDGEMENT OF EXT.P3 REPRESENTATION AT THE COLLECTORATE.

EXT.P5: TRUE COPY OF INJUNCTION APPLICATION DATED 8.12.06.

EXT.P6: TRUE COPY OF APPLICATION DATED 8.12.06 FOR DISPENSING WITH THE NOTICE U/S. 80 C.P.C.

EXT.P7: TRUE COPY OF THE ORDER DATED 18.12.06 OF THE PRINCIPAL SUB COURT, THRISSUR.

/TRUE COPY/

PA TO JUDGE.

M.SASIDHARAN NAMBIAR,J.

W.P.(C)NO.1790 OF 2007

DATED THIS THE 23rd DAY OF JANUARY, 2007

JUDGMENT

Petitioner is plaintiff. Respondents are defendants. Petitioner filed the suit with an application under Sub Section 2 of Section 80 of Code of Civil Procedure for leave of the Court to institute the suit without serving notice as provided under Sub Section 1 of Section 80. Under Ext.P1 order, learned Sub Judge disallowed the application and directed petitioner to present the plaint after complying with the provisions of Sub section 1 of Section 80. This petition is filed under Article 227 of Constitution of India.

2. Learned Counsel appearing for petitioner and learned Government Pleader were heard.

3. Learned Sub Judge held that the contention of petitioner in the suit is that the amount claimed by respondent is time barred and he has retired from partnership firm and these are not sufficient grounds to dispense with a notice under Section 80 (1) of Code of Civil Procedure.

4. Learned Counsel appearing for petitioner pointed out that it is not the case of petitioner that the amount is barred as stated by

learned District Judge under Ext.P7 order. The question to be decided in an application under sub Section 2 of Section 80 is whether petitioner is to be granted leave of the Court to file the suit without complying with the provisions of Sub Section 1,as he has to obtain an urgent or immediate relief against government or any public officer in respect of an act purporting to be done by such public officer in his official capacity. Sub section 2 of Section 80 of Code of Civil Procedure is in the nature of an exception to sub section 1. If petitioner can satisfy the Court that he has to obtain an urgent or immediate relief, Court has to grand the relief sought for under sub section 2. The plaint allegation reveals that petitioner has sought an urgent or immediate relief in the suit. In such circumstances, learned Sub Judge should have granted leave to the petitioner to institute the suit. Ext.P7 order is quashed.

Learned Sub Judge is directed to grand leave to petitioner to institute the suit as sought for. Learned Sub Judge has to consider whether petitioner is entitled to the interim relief sought for on merits.

M.SASIDHARAN NAMBIAR,JUDGE

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